

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

PHILLIP JAQUEZ,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-05-725-F
)	
CORRECTIONS CORP. OF AMERICA,)	
<i>et al.</i> ,)	
)	
Defendants.)	

REPORT AND RECOMMENDATION

The Plaintiff has initiated the present action under 42 U.S.C. § 1983. The matter has been referred to the undersigned for preliminary review and submission of findings and recommendations. Order of Referral to United States Magistrate Judge (June 27, 2005). For the reasons set forth below, the undersigned recommends dismissal of the action without prejudice to refiling.

The Court granted pauper status on June 28, 2005, and ordered an initial payment of \$6.07 toward the filing fee. Order Granting Leave to Proceed *in Forma Pauperis* at p. 1 (June 28, 2005); *see* Prison Litigation Reform Act, 28 U.S.C. § 1915(b)(1)(A)-(B). The deadline for this payment was July 18, 2005. Order Granting Leave to Proceed *in Forma Pauperis* at p. 1 (June 28, 2005). The Plaintiff's payment deadline was later extended to August 8, 2005. Order (July 26, 2005). To date, the Plaintiff has not made the \$6.07 payment or demonstrated good cause for his failure to pay.

The Court has warned Mr. Jaquez, stating: “The failure to timely comply with the requirement of an initial partial filing fee by August 8, 2005, could result in dismissal of the action.” Order (July 26, 2005).

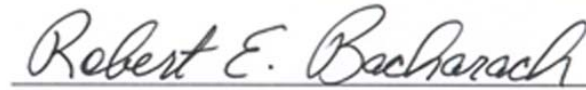
The record does not reflect any excuse for Mr. Jaquez’s failure to pay. In his application for pauper status, he attached an account statement reflecting \$68.06 in his prison account. Motion for Leave to Proceed *in Forma Pauperis* and Supporting Affidavit, attachment (June 24, 2005).

Although Mr. Jaquez knew of the payment deadline and was apparently able to pay the \$6.07, he has not submitted any monies to the Court or requested another extension of time. In these circumstances, the Court should dismiss the action without prejudice to the filing of a new suit. *See Cosby v. Meadors*, 351 F.3d 1324 (10th Cir. 2003) (upholding dismissal of a federal inmate’s civil rights complaint based on noncompliance with orders requiring installments on the filing fee or to show cause for the failure to pay), *cert. denied*, 541 U.S. 1035 (2004).

The Plaintiff is advised of his right to object to this report and recommendation by September 5, 2005. *See* W.D. Okla. LCvR 72.1(a). If the Plaintiff does object, he must file a written objection with the Court Clerk for the United States District Court, Western District of Oklahoma. The Plaintiff is further advised that if he does not timely object, he would waive his right to review by the Tenth Circuit Court of Appeals. *See Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

The referral is terminated.

Entered this 16th day of August, 2005.

A handwritten signature in cursive script, reading "Robert E. Bacharach", written in black ink on a light-colored background.

Robert E. Bacharach

United States Magistrate Judge